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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/734,220	12/15/2003	Matthew Barrer	AED-0003	8637

23377 7590 02/03/2009

WOODCOCK WASHBURN LLP
CIRA CENTRE, 12TH FLOOR
2929 ARCH STREET
PHILADELPHIA, PA 19104-2891

EXAMINER	
BOYCE, ANDRE D	

ART UNIT	PAPER NUMBER
3623	

MAIL DATE	DELIVERY MODE
02/03/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/734,220	BARRER, MATTHEW	
	Examiner	Art Unit	
	Andre Boyce	3623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *05 November 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *26,27,30,31,33,34 and 36-47* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *26,27,30,31,33,34 and 36-47* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submissions filed June 20, 2008, July 21, 2008 and November 5, 2008 have been entered.

2. Claim 26 has been amended. Claims 26, 27, 30, 31, 33, 34 and 36-47 are pending.

Declaration Under 37 CFR § 1.131

3. The declaration filed July 21, 2008 under 37 CFR 1.131 establishing that the subject matter recited in independent claim 26 was invented before May 8, 2000 has been considered and is effective to overcome the Cardiac Arrest Survival Act (CASA) (November 15, 2000) and the following references used to describe CASA: the "Cardiac Arrest Survival Act of 2000," May 23, 2000; press release, "American Red Cross Applauds Passage of Cardiac Arrest Survival Legislation," October 27, 2000; article, "President Clinton Enacts Nation's First Law to Place Lifesaving Portable Defibrillators in Federal Buildings," *Business Wire*, November 15, 2000 references.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 26, 27, 30, 31, 33, 34 and 36-47 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 26 recites the limitation "the program" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claims 27, 30, 31, 33, 34 and 36-47 are rejected since they depend therefrom.

Claim Rejections - 35 USC § 101

6. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

7. Claims 26, 27, 30, 31, 33, 34 and 36-47 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

In order for a method to be considered a "process" under §101, a claimed process must either: (1) be tied to a particular machine or apparatus or (2) transforms a particular article to a different state or thing. *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *In re Bilski*, 545 F.3d 943, 88 USPQ2d 1385 (Fed.

Cir. 2008). If neither of these requirements is met by the claim, the method is not a patent eligible process under §101 and is non-statutory subject matter.

With respect to independent claim 26, the claim language recites the steps of auditing a program, certifying a facility, and providing ongoing support, however the claim language does not include the required tie or transformation.

Claims 27, 30-31, 33-34 and 36-47 are rejected based upon the same rationale, wherein the claim language does not include the required tie or transformation.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 26, 27, 30, 33 and 43-45 are rejected under 35 U.S.C. 102(b) as being anticipated by Altmann (10 Frequently Asked Questions about Automated External Defibrillators, September 1999).

As per claim 26, Altmann discloses a method of providing a cardiac emergency readiness program at a facility (i.e., automated external defibrillator (AED) program in a company, page 3) comprising:

auditing the program to determine if the program has met certain minimum requirements including proper placement of at least one automated external defibrillator at the facility so as to assure a predetermined proximity to an automated

external defibrillator by any victim of sudden cardiac arrest at the facility (i.e., Universal Access to Defibrillation statues requiring completion or equivalent training program, including additional refresher classes required to renew certification, i.e., audit, wherein the AED program include how may devices a company needs, which inherently includes determining proper placement and how many people are being trained, page 3);

certifying the facility as having a cardiac emergency readiness program which has met certain minimum requirements including the proper placement of the at least one automated external defibrillator (i.e., Universal Access to Defibrillation statues requiring completion or equivalent training program, wherein the AED program include how may devices a company needs, which inherently includes determining proper placement, page 3); and

providing ongoing support for the cardiac emergency readiness program including the promotion of the facility as having a certified cardiac emergency readiness program through a communication network (i.e., Survivalink works with customers to develop and implement AED programs, provides curriculum, manuals, and support tools, including communication to employees via a website page 3).

As per claim 27, Altmann discloses conducting a survey to determine the proper placement of the at least one automated external defibrillator so as to assure the predetermined proximity (i.e., first steps in implementing an AED program is to determine needs, including how many devices a company needs, which inherently includes determining proper placement, page 3).

As per claim 30, Altmann discloses identifying facility personnel to be responsible for the cardiac emergency readiness program, said certifying the facility as having met said certain minimum requirements including a requirement for the identification of facility personnel responsible for the cardiac emergency readiness program (i.e., AED program considers how many people are being trained and their previous medical/CPR training, page 3).

As per claim 33, Altmann discloses reviewing training of facility personnel to use the at least one automated external defibrillator, said certifying the facility as having met certain minimum requirements including a requirement for proper training of facility personnel to use the at least one automated external defibrillator (i.e., Universal Access to Defibrillation statues requiring completion or equivalent training program, page 3).

As per claims 43-45, Altmann discloses wherein the facility is a business complex, an industrial site, and a manufacturing site (i.e., company with employees).

Claim Rejections - 35 USC § 103

10. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

11. Claims 31 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Altmann (10 Frequently Asked Questions about Automated External Defibrillators, September 1999), in view of "Providing Automated External Defibrillation," 1995 [hereinafter, PAED].

As per claim 31, Altmann does not explicitly disclose reviewing maintenance of the at least one automated external defibrillator, said certifying the facility as having met certain minimum requirements including a requirement for proper maintenance of the at least one automated external defibrillator. PAED disclose medical control and quality assurance, including periodic assessment of the service and operators and identification of AED device used, page 3. It would have been obvious to one of ordinary skill in the art to include the medical control and quality assurance of PAED in Altmann, since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

As per claim 34, Altmann discloses the number of automated external defibrillators (i.e., how may devices a company needs, page 3). Altmann does not explicitly disclose the maintenance of a checklist including the name of the person responsible for the cardiac emergency program. PAED discloses the EMS agency must identify the Medical Director responsible for the AED program (page 3). It would have been obvious to one of ordinary skill in the art to include the name of the person responsible for the cardiac emergency program as seen in PAED, in Altmann, since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

12. Claims 36-42, 46 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Altmann (10 Frequently Asked Questions about Automated External Defibrillators, September 1999)

As per claims 36-42, 46 and 47, Altmann does not explicitly disclose wherein the facility is a hotel, a convention hall, a shopping mall, a golf course, used for supporting event, used for concerts, a health club, an amusement park, and an educational institution. However, these differences are only found in the non-functional descriptive material and are not functionally involved in the steps recited nor do they alter the recited structural elements. The recited method steps would be performed the same regardless of the specific data. Further, the structural elements remain the same regardless of the specific data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack,* 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry,* 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP §2106. As a result, it would have been obvious to include the facility is a hotel, a convention hall, a shopping mall, a golf course, used for supporting event, used for concerts, a health club, an amusement park, and an educational institution in Altmann, since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

Conclusion

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andre Boyce whose telephone number is (571)272-6726. The examiner can normally be reached on 9:30-6pm M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Beth Boswell can be reached on (571) 272-6737. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Andre Boyce/
Primary Examiner, Art Unit 3623
January 29, 2009